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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,602

02/22/2007

Scott Hugh Miller

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ORRICK, HERRINGTON & SUTCLIFFE, LLP  
IP PROSECUTION DEPARTMENT  
4 PARK PLAZA  
SUITE 1600  
IRVINE, CA 92614-2558

EXAMINER

GEDEON, BRIAN T

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

04/29/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,602	<b>Applicant(s)</b> MILLER ET AL.	
	<b>Examiner</b> Brian T. Gedeon	<b>Art Unit</b> 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-32 is/are allowed.
- 6) ☒ Claim(s) 3-10, 15, 17-20, and 22-28 is/are rejected.
- 7) ☒ Claim(s) 11-14, 16 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is in response to the amendment after non-final filed 15 January 2009. Claims 3-32 are pending.

### ***Response to Arguments***

2. Applicant's arguments, see Remarks, filed 15 January 2009, with respect to the rejection(s) of claim(s) 1-10 and 15-26 under Shifrin et al. (WO 95/05122) or Gilles et al. (US Publication no. 2006/0052866) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Winston (US Patent no. 5,607,378).

### ***Claim Objections***

3. The objections to claims 4 and 6 have been withdrawn in view of Applicant's amendments and remarks.

### ***Claim Rejections - 35 USC § 112***

4. The rejections of claims 1-3, 13-15, and 18 under 35 U.S.C. 112, second paragraph, as being indefinite have been withdrawn in view of Applicant's amendments and remarks.

Art Unit: 3766

5. Claims 13, 14, 31, and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Though the specification mentions the term “warp fibers”, it is considered that there is insufficient written description concerning what the warp fibers are comprised of.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 9, 15, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston (US Patent no. 5,607,378).

In regard to claim 3, Winston describes a wrap for use while exercising. The wrap 14 is designed to be attached to a limb in an “encircling relation”, col 2 lines 8-12. The wrap 14, as depicted in figures 5 and 6, is constructed such that it is longer than it is wide and when placed around a subject places more compressive force at the center than along its sides, see figure 1, due to strap 46 and the patch 40. The wrap as described in Winston is considered to be an analogous equivalent to the wrap as

Art Unit: 3766

claimed since it is suggestive that the structural features of the wrap of Winston can be adapted to fit around any member with a round cross-sectional area to provide compressive support, wherein more compression is exhibited around the center.

Therefore modification of the wrap of Winston to be used as a compressive support of a blood vessel would be obvious to one of ordinary skill in the art since it would involve a modification to the wraps size and material compatibility.

In regard to claim 9, the wrap of Winston is constructed out of stretchable fabric which is considered to be a woven material, col 2 lines 56-60.

In regard to claim 15, the wrap of Winston has a centrally placed strip of material 46.

In regard to claim 19, the wrap 14, as depicted in figures 5 and 6, is constructed such that it is longer than it is wide, figures 5 and 6.

8. Claims 4-8, 23, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston (US Patent no. 5,607,378) in view of Cohen (US Patent no. 3,467,077).

In regard to claims 4-8, and 23, Winston describes the invention as claimed except for the deforming device comprising an inflatable chamber. Cohen describes a blood pressure cuff, with similar features to the wrap of Winston. The Cohen cuff is comprised of a strip of fabric to affix an inflatable bladder, col 1 lines 25-30. Therefore it is considered obvious to one of ordinary skill in the modify the wrap of Winston in view

Art Unit: 3766

of Cohen since Cohen demonstrates that a piece of material such as the wrap of Winston are capable and are known to have inflatable bladders.

Further in regard to claim 23, the cuff of Cohen, has two tubes 23 and 24 that allow the bladder to be inflated. It is considered that the tubes are capable of being an opening for a fluid.

In regard to claim 28, if the wrap described by Winston in view of Cohen were modified to fit a blood vessel, the inflatable chamber of Cohen, when inflated is capable of deforming a vessel.

9. Claims 10, 17, 22, and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winston (US Patent no. 5,607,378) in view of Gilles et al. (US Publication no. 2006/0052866).

In regard to claims 10, 17, and 26, Winston describes the invention as claimed except for the choice of materials used to construct the wrap. Gilles et al. describe a method for treating a stiffened blood vessel by applying an elastic membrane wrap 6, formed of biocompatible material, and engages the blood vessel in such a manner as to reduce the diameter of the blood vessel, para 29-30. The wrap of Gilles et al. is constructed out of knitted or woven material from biocompatible polymers, para 93. Modification of Winston in view of Gilles et al is considered to be obvious to one of ordinary skill in the art since it would only involve the choice of materials appropriate for the intended use of the wrap.

In regard to claim 22, the wrap of Gilles et al. is shaped to allow for good conformance with an aorta, para 25-26.

In regard to claims 24, 25, and 27, the wrap of Gilles et al. is constructed out of elastic silicon or elastic polyurethane material, para 42.

10. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winston (US Patent no. 5,607,378) in view of Cohen (US Patent no. 3,467,077), further in view of Sano et al. (US Patent no. 5,511,551)

In regard to claim 20, Winston in view of Cohen describe the invention as claimed except for the slimmed region near the longitudinal midpoint. Sano et al. describe a blood pressure cuff, with similar construction for a wrap as described by Winston and Cohen. Figures 9 and 11 of Sano et al. show the cuff with a region with an indentation, considered to be a slimmed region, near the longitudinal midpoint. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Winston and Cohen to have a slimmed region since this feature is described to be known in the art by Sano et al.

### ***Allowable Subject Matter***

11. Claims 11-14, 16, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 29-32 are allowed.

**Conclusion**

13. In view of the new grounds of rejection, this action is made **NON-FINAL**.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272-3447. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl H. Layno/  
Supervisory Patent Examiner, Art Unit 3766

Carl H. Layno  
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Examiner, Art Unit 3766  
27 April 2009



Application/Control Number: 10/595,602  
Art Unit: 3766

Page 8